

Bill - 00445

Calendar No. 144

93D CONGRESS }
1st Session }

SENATE

REPORT
No. 93-152

TO PERMIT IMMEDIATE RETIREMENT OF CERTAIN FEDERAL EMPLOYEES

MAY 15, 1973.—Ordered to be printed

Mr. McGEE, from the Committee on Post Office and Civil Service,
submitted the following

REPORT

[To accompany S. 1804]

The Committee on Post Office and Civil Service, to which was referred the bill (S. 1804) to permit immediate retirement of certain Federal employees, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

PURPOSE

The purpose of this bill is to allow employees who meet the requirements for involuntary separation to retire at their own option during a period when the employing agency is undergoing a major reduction in force.

STATEMENT

Present law provides [5 U.S.C. 8336(d)] that an employee who has 20 years of service at age 50 or 25 years of service at any age is entitled to retire on an immediate annuity if he is involuntarily separated for reasons other than misconduct or delinquency. Retirement under the involuntary-separation provisions usually comes about as the result of the abolition of a position or separation resulting from a reduction in force.

The rules under which a reduction in force is conducted usually result in the separation or downgrading of employees with the least seniority and retention preference. Thus, younger employees who have no desire to lose their jobs are sometimes separated in a RIF while older employees, some of whom may be ready and willing to retire, are retained. Such older employees may not invoke the involuntary-separation-retirement provisions of law even though qualified in age and length of service because the RIF procedure has not required them to be separated immediately.

H.R. 6077 provides that if an employee meets the age and/or length of service requirement, he may retire at his option when the agency or agency subdivision employing him is involved in a major reduction in force. A determination of when a reduction in force is major would be made by the Civil Service Commission. Likewise, the bill authorizes the Commission to fix the geographic area and period of time in which the retirement option would operate. The Commission advises that in making these determinations it would take into account such influences as the impact of the RIF on the local economy, the degree of disruption of the operations of the agency or agency subdivision, and the effect of the RIF on the agency's future ability to fulfill its function.

Under the provisions of this bill, an agency, having decided to conduct a reduction in force, would so advise the Civil Service Commission and request that the Commission determine whether the RIF would be classified as "major", and, if so, that the Commission rule on the geographic area and time to be encompassed. When the Commission had affirmatively complied, the agency would be authorized to accept during the prescribed time period optional-retirement applications from employees meeting the involuntary-separation requirements of law. This bill vests in these employees the option to retire or to remain on the job and face the consequences of the reduction in force. If he decided to retire, the eligible employee would submit his retirement application which the agency would be bound to accept and honor. It is anticipated that in cases in which retirement applications were numerous, the impact of the RIF could be markedly softened, that is, fewer employees would be separated through reduction-in-force procedures because employment costs would be diminished by the retirements.

This bill would not apply to employees otherwise eligible to retire optionally (age 55 with 30 years of service, age 60 with 20, or age 62 with 5); and the annuity reduction formula applying all involuntarily separated employees would remain unchanged, that is, annuities are reduced by one-sixth of 1 percent for each month the employee is under age 55.

It is the committee's understanding that the Civil Service Commission and the agencies will administer the provisions of this legislation with close attention to the possibility that coercion, under the provisions of this bill, could be exerted to force an unwilling but eligible employee into retirement. The Commission and the agencies must protect the employee from this exigency. Retirement under the circumstances prescribed by this bill must be totally optional; and the committee trusts that the Commission and the agencies understand that an eligible employee can make his choice only if all his rights, including his retention rights and the probable effect upon him of the reduction in force, are fully explained to him.

Realistically viewing coercion as a source of possible difficulty in the future, the committee requests the Civil Service Commission to provide the committee with a report by the end of the 93d Congress of affirmative steps taken to insure the protection from coercion of employees who fall within the purview of the bill's provisions; and accounts of the discovery of any coercion which may be attempted.

AMENDMENTS

The committee has amended S. 1804 to include the word "voluntarily" so that the law will reflect the committee's intent that employees retiring under the provisions of this bill do so at their option. If they meet the eligibility requirements for retirement and do not wish to exercise the option affirmatively, they may remain on the job.

The committee has also amended S. 1804 to include a provision broadening the service creditability for retention purposes of former employees of agricultural county committees. Present law provides that former service on an agricultural county committee may be credited for retention purposes only if the employee is in or under the Department of Agriculture. The committee amendment provides that former service with an agriculture county committee may be credited for retention purposes for an employee of any Federal agency.

The committee understands that at the time the current applicable provisions of law were enacted (1968), most Government-employed former county committee employees were in the Department of Agriculture and that at that time it was envisioned that their experience and expertise acquired on county committees would be utilized almost entirely within the Department of Agriculture. This supposition, the committee understands, has not proven totally accurate. Former county committee employees are employed throughout the Government. Accordingly, the committee recommends treating all such Government-employed former employees the same for retention-right purposes.

EFFECTIVE DATE

The bill would become effective on the date of enactment.

COST

The Civil Service Commission can only estimate the cost because the number of employees who retire under the provisions of the bill depends whether reductions in force are agencywide or limited to small areas.

If 1,000 employees retire under the provisions of this bill, the Commission estimates an increase in the unfunded liability of the Retirement Fund of approximately \$10.1 million, financed under 5 U.S.C. 8348(f) by an annual appropriation of \$600,000 in each of the following 30 years.

PRIOR ACTION

In 1972 this committee favorably reported (Report No. 92-773) a similar bill, S. 3380, which passed the Senate but failed of enactment in the House of Representatives.

AGENCY VIEWS

This bill is based upon an official recommendation of the Civil Service Commission. Following are two letters from the chairman of the Civil Service Commission recommending enactment:

U.S. CIVIL SERVICE COMMISSION,
Washington, D.C., February 22, 1973.

HON. GALE W. MCGEE,
*Chairman, Committee on Post Office and Civil Service, U.S. Senate,
Washington, D.C.*

DEAR MR. CHAIRMAN: Within the next few days the Civil Service Commission will transmit to the President of the Senate and the Speaker of the House proposed legislation to authorize early optional retirement for certain employees during major reductions in force.

Such legislation can help to ease the hardships caused by reductions in force. It can save the jobs of younger employees by permitting older employees with longer service to retire if they wish to do so.

A copy of the draft bill and accompanying documents are attached. In view of announced plans for personnel reductions in the near future, I urge your careful consideration and support of the proposal.

Sincerely yours,

ROBERT E. HAMPTON, *Chairman.*

Enclosures.

U.S. CIVIL SERVICE COMMISSION,
Washington, D.C., February 26, 1973.

HON. SPIRO T. AGNEW,
President of the Senate.

DEAR MR. PRESIDENT: The Commission submits for the consideration of the Congress, and recommends prompt favorable action on, the attached legislative proposal which, during a major reduction in force in a department or agency, would permit the optional retirement on reduced annuity of Federal employees with at least 25 years of service, or, after becoming 50 years of age, with at least 20 years of service.

The proposed legislation would be of inestimable benefit to employees, management, and the community in which an installation undergoing a reduction in force is located. Reductions in force have a depressing effect on employee morale and result in severe personal hardships caused by loss of income and uncertainty regarding future employment. Major reductions in force, through multiple "bumping" actions, also have a disruptive effect on agency management. To the extent that attrition, particularly retirement, reduces the need for involuntary separations and the chain-effect displacement of employees with lower retention rights by those with higher retention rights, these hardships and disruptions are mitigated.

In a smaller community where a Federal installation is a main source of employment, a major reduction in force may adversely affect the community's economy. In a larger community, the release of many employees in some occupational categories may place on an already troubled labor market people for whom there are no comparable occupations in the private sector. Permitting people to retire on annuity income and spreading voluntary retirements throughout an entire department or agency, or a subdivision of a department or agency, as the attached legislation proposes, would at least moderate these adverse effects of reductions in force on the community.

Another benefit to be derived from the proposed legislation is that it will enhance the agency's future effectiveness in carrying out its mission by helping to retain younger employees. Nothing raises the average age of an organization more quickly than a substantial reduction in force in which the youngest employees with the lowest retention standing are separated and the oldest employees are retained.

Under present law, an employee who is at least age 50 and has at least 20 years' service, or 25 years' service regardless of age, may retire on an immediate annuity if he is involuntarily separated, as when he is reached by reduction in force. Unless the employee is old enough and has sufficient service to retire optionally (age 55 with 30 years of service, age 60 with 20, or age 62 with 5), if he is not reached for reduction in force, he does not have the right to retire even if he is desirous of doing so, and thus permit an employee who wants to continue to work to be retained. The proposed legislation would simply give the long service employee who is not eligible to retire under the regular optional retirement provision of the law the opportunity to retire voluntarily during a limited period when his agency is undergoing a major reduction in force.

Under the proposed legislation, the Commission would make the determination as to when a reduction in force is major and would fix the time within which employees could exercise the option to retire. In determining when a reduction in force is a major one, the Commission intends to take into account such things as the impact it will have upon the local economy, the degree of disruption of the operations of an agency or installation, and the effect on its future capability to effectively carry out its mission. A reduction in force which affects a large number of employees in relation to the total number in the agency, or a large number of employees in the same competitive area or in a community would clearly be a major one. The time within which the option to voluntarily retire could be exercised would be set by the Commission so that employees could not defer a decision until the reduction-in-force had been nearly completed. The Commission will also make the determination as to whether eligible employees throughout the agency could exercise the option to retire, or whether the option to retire would be restricted to eligible employees of the agency who are employed in specific geographic areas or organizational units where the effects of the reduction in force are particularly severe. Like employees who are involuntarily separated, those who exercise the option to retire voluntarily in a major reduction in force will have their annuities reduced by one-sixth of 1 percent (2 percent a year) for each month they are under age 55.

As in regular optional retirement cases, the Commission would be vigilant in enforcing the requirement that a retirement under the proposed legislation is the result of the employee's voluntary action rather than of coercion by his agency. Also in situations where voluntary retirements are not confined to designated geographic areas, the Commission would require an agency to try to place an employee adversely affected by a reduction in force in one geographic area in a job vacated by retirement in another area.

Inasmuch as the number of employees eligible to retire if the proposed legislation were enacted would depend on whether the Commission authorized voluntary retirement on an agencywide, or on a

more restrictive geographic basis, it is not possible to provide more than speculative cost estimates.

The Office of Management and Budget advises that there is no objection from the standpoint of the administration's program to submission of this draft bill to Congress.

A similar letter is being sent to the Speaker of the House.

By direction of the Commission:

Sincerely yours,

ROBERT HAMPTON, *Chairman*.

Enclosure.

CHANGES IN EXISTING LAW

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows (existing law in which no change is proposed is shown in roman; existing law proposed to be omitted is enclosed in black brackets; new matter is shown in italic):

SECTION 8336 OF TITLE 5, UNITED STATES CODE

CHAPTER 83--RETIREMENT

* * * * *

SUBCHAPTER III--CIVIL SERVICE RETIREMENT

* * * * *

§ 8336. Immediate retirement.

(a) * * *

* * * * *

[(d) An employee who is involuntarily separated from the service, except by removal for cause on charges of misconduct or delinquency, after completing 25 years of service or after becoming 50 years of age and completing 20 years of service is entitled to a reduced annuity.]

(d) *An employee who is separated from the service--*

(1) *involuntarily, except by removal for cause on charges of misconduct or delinquency; or*

(2) *voluntarily, during a period when the agency in which he is employed is undergoing a major reduction in force, as determined by the Commission, and who is serving in such geographic areas as may be designated by the Commission;*
after completing twenty-five years of service or after becoming fifty years of age and completing twenty years of service is entitled to a reduced annuity.

* * * * *

SECTION 3502 OF TITLE 5, UNITED STATES CODE

§ 3502. Order of retention

(a) The Civil Service Commission shall prescribe regulations for the release of competing employees in a reduction in force which give due effect to—

- (1) tenure of employment;
- (2) military preference, subject to section 3501(a)(3) of this title;
- (3) length of service; and
- (4) efficiency or performance ratings.

In computing length of service, a competing employee—

(A) who is not a retired member of a uniformed service is entitled to credit for the total length of time in active service in the armed forces;

(B) who is a retired member of a uniformed service is entitled to credit for—

(i) the length of time in active service in the armed forces during a war, or in a campaign or expedition for which a campaign badge has been authorized; or

(ii) the total length of time in active service in the armed forces if he is included under section 3501(a)(3) (A), (B), or (C) of this title; and

(C) [who is an employee in or under the Department of Agriculture] is entitled to credit for service rendered as an employee of a county committee established pursuant to section 590h(b) of title 16, or of a committee or an association of producers described in section 610(b) of title 7.

○